

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 9-84:

LEWISTOWN EDUCATION ASSOCIATION,
NEA,

Complainant,

- vs -

FINAL ORDER

FERGUS COUNTY SCHOOL DISTRICT #1,
LEWISTOWN,

Defendant.

The Findings of Fact, Conclusions of Law and Recommended Order were issued by Hearing Examiner Stan Gerke on April 24, 1985.

Exceptions to the Findings of Fact, Conclusions of Law and Recommended Order were filed by Emilie Loring, attorney for Complainant, on May 13, 1985.

Oral argument was scheduled before the Board of Personnel Appeals on Wednesday, July 31, 1985.

After reviewing the record and considering the briefs and oral arguments, the Board orders as follows:

1. IT IS ORDERED that the Complainant's Exceptions to the Findings of Fact, Conclusions of Law and Recommended Order are hereby denied.

2. IT IS ORDERED that this Board therefore adopts the Findings of Fact, Conclusions of Law and Recommended Order of Hearing Examiner Stan Gerke as the Final Order of this Board.

DATED this 14 day of August, 1985.

BOARD OF PERSONNEL APPEALS

By

Alan L. Jacobson
Alan L. Jacobson
Chairman

CERTIFICATE OF MAILING

I, Jennifer Jacobson, do certify that a true and correct copy of this document was mailed to the following on the 15 day of August, 1985:

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STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 9-84

LEWISTOWN EDUCATION ASSOCIATION,
MEA,

Complainant,

-vs-

FERGUS COUNTY SCHOOL DISTRICT #1
LEWISTOWN,

Defendant.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND
RECOMMENDED ORDER

On April 9, 1984, the Lewistown Education Association, MEA (the Complainant) filed an unfair labor practice with this Board alleging that the Fergus County School District #1, Lewistown (the Defendant) violated Section 39-31-401(1) and (5) MCA by refusing to bargain in good faith. Specifically, the Complainant alleged that the Defendant refused to bargain in good faith by its unilateral action of discontinuing the practice of payroll deduction of teachers' voluntary contributions to the political action committee (PAC). The Complainant alleged further that during the current school year the Defendant refused to make the PAC payroll deduction and that the Complainant had exhausted its attempt to have the matter corrected under the contract grievance procedure. The School Board is the final step in the grievance procedure.

In ANSWER filed with this Board on April 13, 1984, the Defendant denied any violations of Section 39-31-401(1) and (5) MCA. This Board conducted an investigation in this matter and issued an Investigation Report and Determination on May 4, 1984. The Report found probable merit for the charge and concluded that a formal hearing in the matter was appropriate.

1 The Parties to this matter agreed not to hold a formal
2 evidentiary hearing and to submit the matter on briefs. The
3 Parties stated their contentions, stipulated the facts and
4 certain exhibits and set a briefing schedule. The last
5 document in this matter was received January 25, 1985.

6
7 COMPLAINANT'S CONTENTION

8 1. Defendant has unilaterally changed a long estab-
9 lished, accepted past practice in effect for a number of
10 years, without bargaining with the Complainant. This
11 constitutes a violation of Sections 39-31-401(1) and (5) and
12 is a refusal to bargain in good faith.

13 DEFENDANT'S CONTENTIONS

14 1. Defendant did not interfere, restrain or coerce
15 any employee in exercising the right of self organization,
16 to form, join or assist a labor organization. While Defen-
17 dant recognizes the Association as a labor organization,
18 NEA-PAC and MEA-PACE are not labor organizations nor are
19 contributions to them considered dues.

20 2. Defendant did not refuse to bargain in good faith
21 with the exclusive representative. The Association did not
22 make a request to bargain, although notified of the change
23 in deduction policy on October 17, 1984. (Exhibit "C" to
24 Answer)

25 STIPULATED FACTS

26 1. Complainant is the recognized exclusive represen-
27 tative of professional staff employed by Defendant.

28 2. Defendant is the duly elected governing body of
29 Fergus County School District #1, a body corporate school
30 district with principal offices in Lewistown, Fergus County,
31 Montana. The School District is a political subdivision of
32 the State of Montana, and operates the elementary and high
schools in Lewistown, Fergus County, Montana.

1
2 3. Since at least 1977, the Parties' collective
3 bargaining agreements have provided for deduction of "dues".
4 The current contract provides as follows:

5 D. DUES CHECK OFF: The School Dis-
6 trict shall deduct from the sal-
7 aries of teachers, such monies for
8 Association Dues as said teachers
9 individually authorize the School
10 District to so deduct. Commencing
11 in October and each month thereaf-
12 ter the School District shall
13 deduct in equal installments the
14 monies that the teacher has agreed
15 to pay the Association during the
16 period in the individual's author-
17 ization. New authorizations, when
18 received by the School District
19 during the school year, will be
20 deducted in equal installments over
21 the remaining monthly payments of
22 the teacher's current contractual
23 salary.

- 24 1. The Association will certify
25 to the School District the
26 current rate of membership
27 dues.
- 28 2. The Association will provide
29 names of individuals who have
30 joined the Association and
31 will submit to the School
32 District a card signed by the
individual teacher authorizing
the deduction by the School
District. In order for a new
deduction to be made for a
given month, the authorization
card must be received by the
School District no later than
the fifth day of said month.
3. The School District shall
transfer all deducted monies,
along with list of the names
for whom deductions are made
to the Executive Secretary of
the MBA on a monthly basis.
4. All remaining unpaid dues or
fees shall be deducted from
the final paycheck of a person
leaving the employment of the
School District before the end
of the school year.

4. Complainant, for a number of years, has used a
deduction form, attached as Exhibit A, which provides for

1 deduction of dues and Political Action Committee (PAC)
2 contributions.

3 5. Until the 1983-84 school year, Defendant has
4 deducted both dues and PAC contributions from salaries of
5 those teachers signing the deduction forms.

6 6. Defendant now refuses to make PAC deductions from
7 the salaries of those teachers authorizing such deductions.
8 This decision was reached without bargaining with Complain-
9 ant.

10 7. Complainant grieved the problem and Defendant's
11 Trustees, the final step in the grievance procedure, af-
12 firmed the decision of the Superintendent that PAC deduc-
13 tions would not be made from teachers' salaries. (Grievance
14 Report Form Attached - Exhibit #1)

15 DISCUSSION

16 The Montana Collective Bargaining for Public Employees
17 Act was modeled closely after the National Labor Relations
18 Act. The Montana Supreme Court, when called upon to inter-
19 pret the Montana Act, 39-31-101 through 39-31-409 MCA, has
20 consistently turned to the National Labor Relations Board
21 (NLRB) and Federal Circuit Court precedent for guidance.
22 State Department of Highways v. Public Employees Craft
23 Council, 165 Mont. 349, 529 P.2d 705, 87 LRM 2101 (1974);
24 AFSCME Local 2390 v. City of Billings, 171 Mont. 30, 555
25 P.2d 507, 93 LRM 2753 (1976); State ex rel. Board of
26 Personnel Appeals v. District Court, 183 Mont. 223, 598 P.2d
27 1117, 103 LRM 2297 (1979); Teamsters Local 45 v. State ex
28 rel. Board of Personnel Appeals, 195 Mont. 272, 635 P.2d
29 1310, 110 LRM 2012 (1981).

30 It is well settled that unilateral changes in mandatory
31 bargaining subjects by an employer is an unfair labor
32 practice [violation of Section 39-31-401(5)MCA]. NLRB v.

1 Katz, 369 US 736, 50 LHRM 2177 (1962). In contrast, a
2 unilateral midcontract change relating to a permissive
3 bargaining subject is not an unfair labor practice. Allied
4 Chemical & Alkal Workers Local 1 v. Pittsburgh Plate Glass
5 Co., 404 Us 157, 70 LHRM 2974 (1971). "The remedy for a
6 unilateral midterm modification to a permissive term lies in
7 an action for breach of contract,... not in an unfair labor
8 practice proceeding..." Allied Chemical & Alkal Workers
9 Local 1 v. Pittsburgh Plate Glass Co., 78 LHRM # 2986. In
10 the matter at hand, the practice of the Defendant deducting
11 Political Action Committee (PAC) contributions from the
12 salaries of teachers who authorized such deductions had been
13 existing for a number of years. During the current school
14 year (1984-85), the Defendant unilaterally discontinued this
15 practice of deducting PAC contributions. To determine
16 whether the Defendant committed an unfair labor practice we
17 must first determine whether deducting PAC contributions is
18 a mandatory or permissive bargaining subject.

19 To determine which subjects are mandatory subjects of
20 bargaining this Board has utilized the balancing test
21 adopted by the Kansas Supreme Court in 1973 (N.E.A. v.
22 Shawnee Mission Board of Education, 512 P.2d 426, 84 LHRM
23 2223) and followed by the Pennsylvania Supreme Court
24 (Pennsylvania Labor Relations Board v. State College Area
25 School District, 337 A2d 262, 90 LHRM 2081). The Kansas
26 Supreme Court said:

27
28 It does little good, we think, to
29 speak of negotiability in terms of
30 "policy" versus something which is not
31 "policy". Salaries are a matter of
32 policy, and so are vacation and sick
 leaves. Yet we cannot doubt the author-
 ity of the Board to negotiate and bind
 itself on these questions. The key, as
 we see it, is how direct the impact of
 an issue is on the well being of the

1 individual teacher, as opposed to its
2 effect on the operation of the school
3 system as a whole. [Emphasis added] The
4 line may be hard to draw, but in the
5 absence of more assistance from the
6 legislature the courts must do the best
7 they can. The similar phraseology of
8 the N.L.R.A. has had a similar history
9 of judicial definition. See Fibreboard
10 Corporation v. Labor Board., 379 U.S.
11 201, 13 L.ED. 2d 233, 85 S. Ct. 398, 57
12 LRRM 2609 and especially the concurring
13 opinion of Steward, J. at pp. 221-222.

14 See also ULP #5-77, Florence-Carlton Unit of the
15 Montana Education Association v. Board of Trustees of School
16 District #15-6, Florence-Carlton, Montana; ULP #34-80,
17 Circle Teachers' Association v. McCone County School
18 District #1.

19 We must now compare the impact on the well being of an
20 individual teacher of deducting or not deducting PAC contri-
21 butions from his pay check to the effect this process of
22 deducting the contributions has on the operation of the
23 school system as a whole. I find that the convenience of
24 payroll deduction of voluntary PAC contributions has little
25 impact on an individual teacher. Surely, the PAC payroll
26 deduction would not impact hours of work, rates of pay,
27 fringe benefits or other conditions of employment. With or
28 without payroll deductions of PAC contributions an
29 individual could make voluntary PAC contributions
30 personally. The payroll deduction of PAC contributions is
31 nothing more than a mere convenience. The Defendant argues
32 that the process involved in making the payroll deductions
of PAC contributions caused administrative problems. To
solve the administrative problems, the Defendant ultimately
determined what items were permitted for payroll deduction.
The Defendant informed each teacher by letter that only
those payroll deductions authorized by the Collective
Bargaining Agreement and District (Defendant) Policy will be

1 made. The list of permitted payroll deductions included
2 association membership (Complainants' dues) which is
3 authorized by the Collective Bargaining Agreement and is
4 also a mandatory bargaining subject (NLRB v. Reed & Prince
5 Mfg. Co. 285 F.2d 131 (1st Cir. 1953) 32 LRRM 2225,
6 cert.den. 346 U.S.887, 33 LRRM 2133; Steelworkers (U.M.W.
7 Porter Co.) v. NLRB, 363 F.2d 272 (D.C. Cir. 1966), 62 LRRM
8 2204) but excluded payroll deduction of PAC contributions.
9 The effect of payroll deduction of PAC contributions did
10 cause problems for the Defendant and ultimately caused the
11 Defendant to develop a policy regarding payroll deductions.

12 In comparison, the payroll deduction of voluntary PAC
13 contributions has virtually no impact on any individual
14 teacher. However the payroll deductions caused administra-
15 tive problems for the school district. I find the payroll
16 deduction of voluntary PAC contributions to be a permissive
17 subject of bargaining.

18 CONCLUSIONS OF LAW

19 The Defendant, Fergus County School District #1,
20 Lewistown, has not violated Sections 39-31-401(1) or (5)
21 MCA.
22

23 RECOMMENDED ORDER

24 IT IS ORDERED that Unfair Labor Practice No. 9-84 be
25 dismissed.
26

27 SPECIAL NOTE

28 Pursuant to ARM 24.26.684, the above RECOMMENDED ORDER
29 shall become the FINAL ORDER of this Board unless written
30 exceptions are filed within 20 days after service of these
31
32

1 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER
2 upon the parties.

3 DATED this 24 day of April, 1985.

4
5 BOARD OF PERSONNEL APPEALS

6
7
8 BY: Stan Gerke

9 Stan Gerke
Hearing Examiner

10 * * * * *

11
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13 CERTIFICATE OF MAILING

14 I, Jennifer Jacobson, do
15 certify that a true and correct copy of this document was
16 mailed to the following on the 24 day of April, 1985:

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